

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-08-IH-1372
)	
)	NAL/Acct. No. 201032080017
Comtel Telcom Assets LP)	
)	FRN No. 0013838701
)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Comtel Telcom Assets LP (“Comtel”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of resolving the Enforcement Bureau’s investigation of compliance by Comtel with Section 254(d) of the Communications Act of 1934, as amended (the “Act”), and section 54.706 of the Commission’s rules by willfully and repeatedly failing to contribute fully and timely to the Universal Service Fund (USF).¹

I. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an order of the Bureau adopting this Consent Decree without any modifications adverse to Comtel Telcom Assets LP.
 - (c) “Bureau” means the FCC's Enforcement Bureau.
 - (d) “Commission” or “FCC” means the Federal Communications Commission.
 - (e) “Compliance Plan” means the program described in this Consent Decree at Paragraph 8.
 - (f) “Comtel” or the “Company” means Comtel Telecom Assets LP and its predecessors-in-interest and successors-in-interest.
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the Bureau’s investigation commenced by the Bureau’s letter of inquiry dated June 26, 2008 to Comtel into whether Comtel violated, among other requirements, Section 254(d) of the Communications Act of 1934, as amended (the “Act”), and section 54.706 of the Commission’s rules, by willfully or repeatedly failing to contribute fully and timely to the Universal Service Fund.

¹ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

- (i) “Parties” means the Bureau and Comtel.
- (j) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Pursuant to Section 254(d) of the Act and section 54.706 of the Commission’s rules, telecommunications carriers that provide interstate telecommunications services are required to contribute to the Universal Service Fund. Comtel has provided interstate, intrastate, and international telecommunications services within and throughout the United States since June 2006.² In May 2008, USAC referred Comtel to the Enforcement Bureau (“Bureau”) after the company accumulated a delinquent balance owed to the USF. The Bureau initiated the Investigation on June 26, 2008, by issuing a letter of inquiry to Comtel seeking information about Comtel’s compliance with USF payment and other related regulatory obligations.³ The inquiry letter directed Comtel to provide documents and information and Comtel responded on July 28, 2008. In its response, Comtel submitted documents and information establishing that it failed to timely make full contributions to the USF. Comtel paid these USF contributions that were not timely made, in part before and in part after submission of its response. Comtel also entered into a Tolling Agreement with the Bureau as well as subsequent extensions in order to resolve the Investigation with a Consent Decree.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in the Adopting Order, without change, addition, modification, or deletion.

5. **Jurisdiction.** Comtel acknowledges that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigations on the Effective Date. In consideration for the termination of the Investigations, Comtel agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Comtel concerning the matters that were subject of the Investigations. The Bureau

² See Letter from James H. Lister, Birch Horton Bittner and Cherot, to Irene Flannery, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 28, 2008, at 4 (“LOI Response”).

³ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to James Cashiola, Chief Executive Officer, Comtel Telcom Assets LP, dated June 26, 2008.

also agrees that it will not use the facts developed in the Investigations through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion, any proceeding, formal or informal, or take any action on its own against Comtel with respect to Comtel's basic qualifications, including its character qualifications to be a Commission licensee or to hold Commission authorizations.

8. **Compliance Plan.** Comtel agrees that it will develop and implement a comprehensive Compliance Plan for the purpose of ensuring its compliance with Section 254(d) of the Act and section 54.706 of the Commission's rules. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Within 60 calendar days of the Effective Date, Comtel will designate a Compliance Officer who will administer the Compliance Plan, supervise Comtel's compliance with the Commission's Rules, and serve as the point of contact on behalf of Comtel for all FCC-related compliance matters.
- (b) **Compliance Manual.** Within 90 calendar days of the Effective Date, the Compliance Officer will develop and distribute a Compliance Manual to Comtel employees and others who engage in activities related to FCC regulation of Comtel. The Compliance Manual will, among other things, describe the rules and requirements as they apply to Comtel regarding the USF contribution requirements. The Compliance Manual shall require Comtel employees to report non-compliance with the terms and conditions of this Consent Decree, Section 254(d) of the Act and section 54.706 of the Commission's rules to the Compliance Officer and senior executive management. The Compliance Manual will encourage personnel to contact Comtel's Compliance Officer or internal regulatory legal counsel with any questions or concerns that arise with respect to Comtel's FCC compliance. The Compliance Manual will be updated from time to time as needed.
- (c) **Compliance Training Program.** Within 90 calendar days of the Effective Date, Comtel will begin administering a Compliance Training Program for Comtel employees and others who engage in activities related to FCC regulation of Comtel. This Compliance Training Program will be presented to new employees who are engaged in such activities, within the first 60 calendar days of employment or as soon as practicable. This Compliance Training Program will track the Compliance Manual, focusing on proper implementation of the Compliance Manual and tailored to specific user groups.
- (d) **Review and Monitoring.** Comtel will review the Compliance Manual and Compliance Training Program annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (e) **Compliance Reports.** Comtel will submit a Compliance Report to the Commission 90 days after the Effective Date and annually thereafter on the anniversary of the Effective Date until the Termination Date. Each Compliance Report will include a certification by the Compliance Officer stating that he has personal knowledge that Comtel has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 254(d) of the Act and section 54.706 of the Commission's rules, has been utilizing those procedures at all times since the previous Compliance Report was submitted, and is not aware of any instances of non-compliance. If the Compliance Officer is not able to so certify, he

shall explain fully the reason(s) therefore. All Compliance Reports shall be directed to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

- (f) **Self-Disclosure.** Comtel will report any occurrences of non-compliance with the terms and conditions of this Consent Decree and with Section 254(d) of the Act and section 54.706 of the Commission's rules within one month after Comtel's Compliance Officer or senior executive management becomes aware of the matter (whether from a report from an employee or otherwise) to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, provided that this report shall not be required if Comtel cures the violation before the report is due.
- (g) **Termination Date.** The requirements relating to the Compliance Plan shall expire 36 months after the Effective Date.

9. **Voluntary Contribution.** Comtel agrees that it will make a voluntary contribution to the United States Treasury in the total amount of \$25,000. The payment shall be made within 30 days after the Effective Date of the Adopting Order. The payment shall be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Comtel will also send electronic notification to Trent Harkrader at Trent.Harkrader@fcc.gov within forty-eight (48) hours of the date said payment is made.

10. **Waivers.** Comtel agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition, modification or deletion. Comtel shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Adopting Order, neither Comtel nor the Commission shall contest the validity of the Consent decree or the Adopting Order, and Comtel shall waive any statutory right to a trial *de novo*. Comtel hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree

11. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of the Consent Decree to which Comtel does not expressly consent) that provision shall be superseded by such Commission rule or Order.

12. **Successors and Assigns.** Comtel agrees that the terms and conditions of this Consent Decree shall be binding on its successors, assigns, and transferees.

13. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute an adjudication on the merits or a factual or legal finding or determination regarding any

compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders and shall not be construed as an admission by Comtel.

14. **Modifications.** This Consent Decree may not be modified without the advance written consent of both Parties.

15. **Paragraph Headings.** The headings to the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

16. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

17. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

By: _____

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission

By: _____

Name
Title
Comtel Telcom Assets LP

Date: _____

Date: _____